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Stanford and Wilkins: International Law, Due Process, Children and the Death Penalty

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*A Case Note by Andre Ramon Soleil**

INTRODUCTION

The United States Supreme Court provided an answer to the question of whether the death penalty should apply to children convicted as adults. Their answer is yes for child murderers ages sixteen and seventeen, and no for children who are younger. In its answer, the Court used Eighth Amendment jurisprudence, while failing to analyze the applicability of the death penalty to children under the Constitution's Fourteenth Amendment, for substantive due process, or under treaty provisions, as mandated under the Constitution's Article Six Supremacy Clause.

This note focuses on the matters of Kevin Stanford and Heath Wilkins. The first section of this article will discuss the precedential cases in this area of law: *Stanford v. Kentucky*,[1] *Wilkins v. Missouri*,[2] and *Thompson v. Oklahoma*[3]. In that section, the crimes of Kevin Stanford, Heath Wilkins and William Thompson will be described, and their course through our judiciary to their legal fate summarized. Particular attention will be paid to the Court's focus on the Eighth Amendment "cruel and unusual" analysis. This article does not criticize the Court's analysis on the issues that it chose to consider, but focuses on constitutional precedents the Court failed to consider in making their determination.

The second section of this article explores the state of death penalty law in the federal jurisdiction, throughout the fifty states generally, and in Kentucky, Missouri, Oklahoma and New York specifically. Kentucky, Missouri and Oklahoma are particularly scrutinized because these are the states from which the precedents arise. New York is scrutinized because it is the home state of your author, his law school, and his anticipated practice.

Section three suggests that the Court's analysis regarding Kevin Stanford and Heath Wilkins' fates was incomplete and fatally flawed: both Stanford and Wilkins were returned to their states' death row. Two approaches are taken to find a breach of Kevin

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* J.D., 2002, City University of New York School of Law.

1 492 U.S. 361 (1989).

2 *Id.*

3 487 U.S. 815 (1988).

Stanford and Heath Wilkins' constitutional and federal right, as children, to be free from the judgment of death for their crimes. The first approach is a historic discussion of the Court's jurisprudence regarding the constitutional rights of children generally and the duty the state owes a child when it takes that child into its custody, a duty that prevents the state from seeking to execute or executing a child for their criminal acts. The second approach applies a positive federal right of children, as found in international and treaty law, that forbids the government from seeking a child's death.

This note concludes that imposing death on any child, as a sentence for any crime, violates the due process clause of the Fourteenth Amendment and that capital punishment exercised on a child deprives that child of his/her liberty interest in obtaining protection and guidance from his/her family and the state, without serving any compelling state interest. Also, the Supremacy Clause of the Constitution, which provides that, ". . . all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land . . .,"[4] creates a constitutional protection for minors, thereby forbidding any state from sentencing to death or executing children.

Upon taking custody of a child for any reason, the state takes on the duty of guiding that child to maturity. This duty, along with international and federal treaty law, forbids the state from acting in a manner that prevents a child from attaining maturity, and particularly forbids the state from seeking the demise of or killing a child. Therefore, the Court wrongly concluded the Kevin Stanford and Heath Wilkins' matters, and wrongly allowed Kentucky and Missouri to kill them for their criminal acts as children.

SECTION I: CRUEL AND UNUSUAL PUNISHMENT

- *Stanford v. Kentucky*[5]: The Facts

At seventeen years of age, Kevin Stanford and an accomplice entered a gas station with felonious intent. Armed with a pistol, Kevin took two gallons of fuel, 300 cartons of cigarettes and a small amount of cash. The station's attendant was Kevin's neighbor. Kevin and his accomplice raped, sodomized and executed her - Kevin shot her in the face and in the back of her head. Later, Kevin joked about the fact that he could have just beaten and bound her,

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[4] U.S. CONST. art. VI, § 2.
[5] 492 U.S. 361.

rather than killing her. The Kentucky court certified Kevin to be tried as an adult and found him guilty of murder, first-degree sodomy and first-degree robbery, and sentenced him to death.

- *Wilkins v. Missouri*[6]: The Facts

At sixteen years of age, Heath Wilkins robbed a convenience store in Missouri. Heath stated that his intent was to kill whoever witnessed the robbery because "a dead person can't talk".[7] Unfortunately, the store's owner witnessed the robbery and Heath repeatedly stabbed her to death. The court certified Heath to be tried as an adult and convicted him of first-degree murder. At his sentencing, Heath joined the state in requesting the death penalty. He was successful in his prayer.

- *The Supreme Court Reviews the Matters of Stanford and Wilkins*

The Court considered these matters to address the question of whether the imposition of the death penalty on sixteen- and seventeen-year-old individuals constituted cruel and unusual punishment as prohibited by the Eighth Amendment. Under "original intent" jurisprudence, the Court found that Kevin and Heath's sentences were neither cruel nor unusual.

Original intent jurisprudence is a method of constitutional interpretation in which the Court applies the meaning of a constitutional passage as it was intended by its drafters and ratifiers. In this interpretation, the Court asks, what did the drafter intend this passage to mean, under what historic and cultural contexts did the ratifiers consider the passage, and where did the drafters and ratifiers minds meet regarding this particular passage? On finding a logical conclusion to these questions, the Court then rules on how the present circumstances would be affected by the constitutional passage as it was originally meant to apply.

The Court concluded that the drafters and ratifiers of the Constitution intended the Eighth Amendment's meaning of "cruel and unusual" to be an "evolving standard[ ] of decency that mark[s] the progress of a maturing society".[8] This Court held that the standard of "modern American society as a whole"[9] applies to

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[6] *Id.*

[7] *Id.* at 366.

[8] *Id.* at 369 (quoting Trop v. Dulles, 36 U.S. 86, 101 (1958)(plurality opinion)(Warren, C.J.)).

[9] *Id.* at 369.

the interpretation of the Eighth Amendment, with deference given to the decisions of our state legislatures.

The Court found that only twelve states had prohibited the sentence of death on offenders seventeen years of age or less, and that a mere fifteen states refused to sentence offenders less than age seventeen to death.[10] Holding that there was no consensus among the states regarding the imposition of the death sentence on children below eighteen but above sixteen, the Court concluded that putting a child sixteen and seventeen years old to death, for the crime of murder, was neither cruel nor unusual, and that Missouri and Kentucky may execute Kevin and Heath.[11]

- *Thompson v. Oklahoma*[12]: Children Less Than Sixteen Years of Age are Protected from Capital Punishment

The Court, in 1988, reviewed Oklahoma's capital sentence of William Thompson, which presented the issue of capital punishment as applied to an offender younger than sixteen. When William was fifteen-years-old, he participated, along with three other people, in the murder of his brother-in-law. The victim was beaten, cut, shot, murdered, chained to a concrete block, and then dumped into a river. The state court certified William to stand trial as an adult and convicted him of first-degree murder. Applying the Eighth Amendment's "cruel and unusual" standard, the Supreme Court held that the imposition of the death penalty on a person who commits a capital offense while less than sixteen-years-old is prohibited given "American sensibilit[ies]".[13] On this occasion, the Court used American sensibilities as one standard of measure, among many, in determining what is constitutionally cruel and unusual.

SECTION II: THE EXECUTION OF CHILDREN AND CURRENT FEDERAL AND STATE STATUTES

The death penalty is not imposed on criminals who commit capital offenses in the federal or New York's jurisdiction, when the criminal is less than age eighteen at the time of the commission of the crime. Capital federal crimes have existed since 1790.[14] However, these laws were discretionary and were arbitrarily applied, a

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10 492 U.S. at 370.
11 492 U.S. at 380.
12 487 U.S. 815.
13 *Id.* at 831.
14 *See* 1 Cong. Ch. 9, 1 Stat. 112 (1970).

condition on capital punishment that the Court declares unconstitutional in 1972.[15] Congress amended the federal death penalty statute, enacting the Continued Criminal Enterprise statutes[16] (hereinafter "CCE") in 1988, and the Federal Death Penalty Act[17] (hereinafter "FDPA") in 1994. Forty-six federal offenses now carry capital penalties.[18] The CCE provides that "[a] sentence of death shall not be carried out upon a person who is under 18 years of age at the time the crime was committed".[19] The FDPA provides that "no person may be sentenced to death who was less than 18 years of age at the time of the offense".[20] Although New York revived its death penalty in 1995,[21] its relevant portion provides that "the defendant was more than eighteen years old at the time of the commission of the crime" to be found guilty of murder in the first degree.[22]

Justice Scalia noted in the Court's 1989 *Stanford* decision that "37 states . . . permit capital punishment, 15 decline to impose it upon 16-year-old offenders and 12 decline to impose it on 17-year-old offenders."[23] These statistics have changed. As previously noted, New York is now among the states that allow capital punishment. Kentucky continues to allow children sixteen or above to be executed for murder[24] if they are judicially certified to stand trial as an adult. Missouri provides that persons less then sixteen will not receive the death penalty whether or not they are certified as an adult for trial.[25] Oklahoma provides that "[a]ny person thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years of age who is charged with murder in the first degree shall be considered as an adult[,]"[26] and that any person convicted of first-degree murder will be executed.[27] Although the exact number of jurisdictions that allow children found guilty of capital crimes to be executed has changed, it remains true that many states either man-

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15 *See* Furman v. Georgia, 408 U.S. 238, 277, 296, 389 (1972)(where the Court required that standards of fairness and consistency be part of any capital offense to meet Eighth Amendment scrutiny).

16 *See* 21 U.S.C. 848(e)-(r) (1994).

17 *See* 18 U.S.C. 3591-98 (1994).

18 *See* 110 Stat. 1214, 1286, 1292, 1296, 1330 (1996).

19 21 U.S.C. §848(l).

20 18 U.S.C. §3591(a)(1)(D).

21 N.Y. PENAL LAW § 125.27 (McKinney 2001).

22 *Id.* at (1)(b).

23 492 U.S. at 370.

24 *See* KY. REV. STAT. ANN. § 507.020 (Michie 1998).

25 *See* MO. REV. STAT. § 565.020 (Matthew Bender & Co. 1999).

26 OKLA. STAT. tit. 10, § 7306-1.1 (1999).

27 *See* OKLA. STAT. tit. 21, § 701.9 (1999).

date or allow a child who commits a capital offense at either sixteen- or seventeen-years-of-age to be put to death.

SECTION III: THE CONSTITUTION FORBIDS THE CAPITAL PUNISHMENT OF CHILDREN

- *A Child has a Constitutionally Protected Liberty Interest in Being Safeguarded from Harm and Given the Opportunity to Reach Maturity.*

A state's denial of a citizen's fundamental rights is subject to strict judicial review. The Court states that "basic in a democracy [ ] stand[s] the interests of society to protect the welfare of children[; and] it is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens."[28]

- *The Court has Found that States Have A Compelling Interest and a Constitutional Duty to Guide the Children in its Custody to Maturity*

The Court has found that the state has a compelling interest in ". . .protect[ing] the welfare of children."[29] The Court has also found a "high duty", rooted in common law, that "those who nurture and direct [a child's] destiny. . .recognize and prepare [the child] for [the] additional obligations [of maturity]."[30] The Court explains that this "high duty" is an "affirmative process of teaching, guiding, and inspiring . . . the growth of young people into mature, socially responsible citizens."[31]

When the state takes a child into its custody and assumes authority over that child's destiny, the state also assumes the "high duty" of guiding that child toward maturity as a socially responsible citizen. The Court supports this construction of the state's duty when it states the two "reasons why the constitutional rights of children cannot be equated with those of adults are the peculiar vulnerability of children [and] their inability to make critical decisions in an informed and mature manner. . .".[32] The "peculiar vulnerability" of a child causes those that assume authority over the

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28 Prince v. Massachusetts, 321 U.S. 158, 165 (1944).

29 *Id.*

30 Pierce v. Soc. of Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 535 (1925).

31 Bellotti v. Baird, 443 U.S. 622, 638 (1979).

32 *Id.*

child to take on an affirmative duty to protect that child from harm, to act in the child's best interests and to guide the child's growth to maturity. The child's inability to make informed and mature decisions creates a liberty interest in receiving guidance and protection from its custodian. When the state assumes control over a child and detains him/her for trial, the state accepts these "high duties", duties which counter its pursuit of putting that same child to death, which is contrary to the child's liberty interest in maturing, being protected from harm, and being guided in their growth to maturity.

- *Treaty Law, as the Supreme Law of the Land, Forbids the Execution of Children and Protects them from Trial for Capital Offenses*

The Constitution provides that, "[t]his Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[33] The Court dictates that the Constitution is supreme or paramount to all other laws in this nation.[34]

Congress ratified the International Covenant on Civil and Political Rights (ICCPR) on June 9, 1992. This treaty provides that the "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age . . ." (hereinafter "Anti-Child-Execution Stipulation" or "ACES").[35] The Vienna Convention on Treaties provides that, "[a] State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless . . . the reservation is incompatible with the object and purpose of the treaty."[36] One of the overall objects and purposes of the ICCPR is that "States . . . shall promote the realization of the [people's] right of self-determination. . .".[37]

The United States reserved its signature to the ICCPR. The Senate's reservation stated: "[T]he United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly con-

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33 U.S. CONST. art. VI, § 2.

34 Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803).

35 International Covenant on Civil and Political Rights, art. 6(5).

36 Vienna Convention on the Law of Treaties, art. 19 (the United States has signed, but not ratified, this treaty).

37 *Supra* note 35, at art. 1(3).

victed . . . including . . . persons below eighteen years of age."[38] This reservation is incompatible with the ICCPR's stated purpose of promoting the realization of individual self-determination. Domestically, children do not legally "realize" full self-determination powers until their state recognizes them as fully competent citizens at the age of eighteen.[39] The states have uniformly determined that the age of general maturity is eighteen.[40] States that impose capital punishment on individuals whom the state, by statute, has ruled do not possess the capacity of self-determination, are contrary to the fundamental goal of the ICCPR and ACES. Thus, the United States' reservation on ACES is invalid as a matter of law.

International jurisprudence holds that customary international law is at least equal to treaty law.[41] Customary international laws emerge from international norms under four criteria: (1) *opinio juris*; (2) duration, which may be satisfied even by short periods if generality and uniformity are indicated; (3) uniformity and consistency of national practice; and (4) generality, meaning that the norm is practiced worldwide rather than limited to a local area.[42] The 1969 Vienna Convention on the Law of Treaties is the controlling instrument regarding treaty formation. Although it is an un-ratified treaty, it is customary international law and binding on all nations.[43]

International legal norms may become a general principle of law[44] with the quality of *jus cogens*, which is defined as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of a general international law having the same character."[45] *Pacta sunt servanda*, the principle that a nation honor its promises, is one of the foremost *jus cogens* principles.[46] The provisions of the Vienna Conven-

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38 126 U.N. Doc. (1995).

39 *Supra* note 35.

40 487 U.S. at 839.

41 BURNS H. WESTON ET AL., INTERNATIONAL LAW AND WORLD ORDER 105 (3d. ed. 1997).

42 DAVID H. OTT, PUBLIC INTERNATIONAL LAW IN THE MODERN WORLD 14-16 (1987); *see also* Statute of the International Court of Justice, concluded June 26, 1945, art. 38(1)(B), 59 Stat. 1031 (defines *opinio juris* as "a general [state] practice accepted as [the] law" of nations) [hereinafter ICJ Statute].

43 I. A. SHEARER, STARKE'S INTERNATIONAL LAW 397 n.2 (11th ed. 1994)(the U.S. Department of State recognizes the Vienna Convention as the "authoritative guide" to treaty law and practice).

44 ICJ Statute, *supra* note 42.

45 *Supra* note 36, at art. 53.

46 *Supra* note 41, at 142.

tion have attained *jus cogens* status, and would therefore be ". . .so fundamental that it invalidates [contrary] rules. . .".[47]

The United States, and its domestic states, became bound, *pacta sunt servanda*, when our nation ratified the ICCPR. Further, the Senate's reservation, which is contrary to ACES and the ICCPR's explicit overall goal, violates the *jus cogens* principles of the Vienna Convention, and is thus invalid.

- *ACES is Applicable to the States as a Self-Executing Provision*

The United States Supreme Court has determined that an international obligation is binding domestically if it is either: (1) self-executing; or (2) non-self-executing and supplemented with implementing legislation.[48] The federal government has not violated ACES; the federal government has no capital crime applicable to children. If ACES is found to be self-executing or non-self-executing but equipped with implementing legislation, then, under Article Six as incorporated into state law through the Fourteenth Amendment, our domestic states are also bound to honor it.

The ACES bears the marks of a self-executing treaty stipulation. Chief Justice Marshall describes that a non-self-executing treaty provision exists "when the terms, of the [treaty] stipulation import a contract[, meaning] when either of the [state] parties [have] engaged to perform a particular act[,] the treaty addresses itself to political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court."[49] Other types of treaty provisions are considered "self-executing" and require no legislative action before they become domestic law.[50]

The ACES is an agreement between States concerning human rights. It is not a State agreement to perform just any act, but rather, it is an agreement to withdraw children from consideration for capital punishment. Moreover, ACES is directly addressed to the judiciary, whose responsibility it is to try persons for crimes committed.[51]

The Senate has declared that the ICCPR, Articles 1 - 7, which

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47 MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 62 (2d ed. 1993).

48 Foster v. Neilson, 27 U.S. 253, 314 (1829).

49 WESTON, *supra* note 41, at 247 (quoting Foster v. Neilson, 27 U.S. (2 Pet.) 253, 314 (1829)).

50 *Id.*

51 U.S. CONST. art. III.

include ACES, are not self-executing.[52] However, this unilateral declaration by the Senate has no legal effect. The judiciary is the interpreter of the law, not the Senate.[53] Neither the Supreme Court, nor any lower court, has interpreted ACES as unenforceable or limited its enforcement.

The U.S. Constitution endows a bicameral Congress, not the Senate alone, with the power to make laws, including the rules of the federal judiciary,[54] and in enforcement of the "law of nations".[55] These congressional acts also require presentment to the President of the United States before taking on the force of law.[56]

The record does not show that the House of Representatives passed any similar bill regarding ACES, nor does it show that the Senate passed any bill at all. The Senate only passed a resolution declaring ACES non-self-executing. Unilateral Senate resolutions do not form law. ACES is therefore self-executing because it has the requisite self-executing characteristics and it is unhindered by any judicial interpretation, domestic enforcement legislation, or rule of the judiciary.

ACES creates a constitutional protection for citizens of the United States comparable to those fundamental protections of the Bill of Rights. Regarding treaties, the Constitution explicitly instructs that: ". . .Judges in every State shall be bound thereby, any Thing in the . . . Laws of any State to the Contrary nonwithstanding."[57] Further, the Fourteenth Amendment states that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law. . .".[58]

The ACES, a provision of the ICCPR, a ratified treaty, is not burdened by any legal reservation or valid enforcement legislation; it is the supreme law of the land subject only to the Constitution of the United States and its interpretation. The ACES explicitly grants citizens less than eighteen years of age immunity from trials for capital crimes and from execution for their crimes. Article Six

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52 138 CONG. REC. S4781, 4783 (daily ed. Mar. 26, 1992)(statement of Sen. Moynihan).

53 *See* Marbury v. Madison, 5 Cranch 137, 2 L.Ed. 60 (1803).

54 U.S. CONST. art. I, § 8, cl. 14 (which empowers Congress to make rules for the government which includes the courts); *see also* U.S. CONST. art I, § 8, cl. 9 and art. III, §§ 1, 2 and 3.

55 U.S. CONST. art. I, § 8, cl. 10.

56 U.S. CONST. art. I, § 7, cl. 3.

57 U.S. CONST. art. VI, § 2.

58 U.S. CONST. amend. XIV, § 1.

of the U.S. Constitution explicitly directs the judges of every state to enforce this treaty-based immunity, and the Fourteenth Amendment directs that no state may enforce any law abridging it. The supreme law of the land now forbids the execution of persons less than eighteen years of age.

"It is well settled that . . . if a law 'impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.'"[59] Oklahoma, Missouri, Kentucky and any other state that enforces, prosecutes or executes a minor for a capital offense, acts in a presumptively unconstitutional and illegal manner that violates the ACES, the ICCPR, and the Sixth Article and Fourteenth Amendment of the U.S. Constitution.

- *Certifying a Child to Stand Trial as an Adult is an Overbroad Application of any State Interest which Denies the Child Constitutional Liberties when he/she has not yet been Found Guilty of any Crime*

The reasons for the enforcement of criminal laws are: punishment and retribution;[60] confinement and the protection of the public from harms;[61] the deterrence of others from committing like crimes;[62] the rehabilitation of the wrongdoer;[63] and restitution for the victim.[64] Criminal law is generally the province of the states, and the state legislatures may each decide their own reasons for criminal law enforcement.[65] When a state takes a delinquent child into custody, it acts under its stated compelling interest in criminal enforcement, while it also assumes the "high duty" and interest of protecting and guiding the child to maturity, a duty that includes rehabilitation. Every state in this nation has devised a juvenile system to meet different competing and compelling interests.[66]

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[59] Harris v. McRae, 448 U.S. 297, 312 (1980) (citing, Mobile v. Bolden, 446 U.S. 55, 76 (1980)).

[60] *See generally* IMMANUEL KANT, THE PHILOSOPHY OF LAW (W. Hastic tr. 1887); *see also* CAL. PENAL CODE § 1170 (West 2000).

[61] MODEL PENAL CODE § 1.02 (1999); *see also* NY PENAL LAW § 1.05 (McKinney 1999).

[62] *Id.*

[63] *Id.*

[64] Kelly v. Robinson, 479 U.S. 36 (1986).

[65] Chapman v. U.S., 500 U.S. 453, 465 (1991) ("a person who has been [ ] convicted [of a crime] is eligible for, and the court may impose, whatever punishment is authorized by statute for his offense, so long as that penalty is not cruel and unusual . . . and so long as that penalty is not based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment.").

[66] Thompson, 487 U.S. at 824.

Certifying a child to stand trial as an adult in a capital offense is overbroad. Although, a state may deny a person's constitutional protections once convicted, as reason dictates, before conviction the state may abridge the Constitution's protections only in the most narrow manner as required to meet its compelling interests or a pressing public need.[67] Certifying a child to stand trial as an adult for a capital crime is also overbroad as a deterrence because children have been found to be incapable of making informed and mature critical decisions.[68] Therefore, they would not understand, give attention to, or be deterred by another child's certification proceedings.

Further, certifying a child to stand trial as an adult for a capital crime is overbroad as a means of retribution and restitution, because the child has not been convicted and the state has yet to prove that society or any victim has a right to punish or to take value from the child. Certifying a child to stand trial as an adult for a capital crime is also overbroad as rehabilitation because its result, the possible sentence of death, is directly contrary to any rehabilitative effort and contrary to the state's duty to protect and guide the child. Certifying a child to stand trial as an adult for a capital crime is not narrowly tailored to meet any state interest, much less a compelling one, is a breach of the state's high duty, and is therefore unconstitutional.

CONCLUSION

A child has a constitutionally protected liberty interest in being safeguarded from harm and in being given the opportunity to reach maturity. The Court has declared that the states have a compelling interest in protecting the welfare of children, and that any party having control of a child has a high duty to give the child guidance towards adulthood. The state assumes this high duty when it assumes the control and guidance over a defendant child.

The ICCPR, as a ratified treaty of the United States, is the supreme law of the land. Its ACES provision forbids the execution or capital trial of children for their crimes. The Senate's reservation regarding the ACES is not valid as a matter of the highest international *jus cogens* laws. The Senate's interpretation that ACES is not self-executing is beyond its competence because the Constitution bestows the judiciary with competence to interpret the laws. Its interpretation has not been enacted as a part of any treaty enforce-

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[67] Chapman, 500 U.S. at 465.
[68] Bellotti, 443 U.S. at 635.

ment or judicial rules legislation. No American court has ever interpreted the ACES in any manner. Therefore, no state judge may impose the death penalty on a child because such a sentence is unconstitutional. No state may enforce a death sentence, or any law allowing a child to be prosecuted for an offense with a capital penalty because such enforcement is presumptively unconstitutional.

There is no state interest for which the trial or execution of a child for a capital offense is narrowly tailored. Such state acts are directly contrary to their "high duty" to protect and guide children in their custody towards maturity. For these reasons, Kevin Stanford and Heath Wilkins should be spared the death penalty, and our present-day children should not legally be allowed to face a trial in which their lives hang in the balance.